



## ARC Hearing Procedures

### 1 Introduction

- 1.1 This document (the "**ARC Hearing Procedures**") represents the procedures for ARC Hearings under Rule E.4 of the ICE Futures Europe Regulations (the "**Rules**", with each of the Rules being a "**Rule**").<sup>1</sup> These ARC Hearing Procedures have been prescribed by the Authorisation, Rules and Conduct Committee ("**ARC Committee**") on 17 February 2022 and have been issued by Circular to Members and Persons Subject to the Regulations on 29 March 2022.
- 1.2 Capitalised terms used but not defined in these ARC Hearing Procedures (including but not limited to "ARC Hearing", "ARC Disciplinary Panel", "Notice" and "Defence") will have the meaning given to those terms in the Rules.
- 1.3 In these ARC Hearing Procedures, the date of effective service will be calculated in accordance with Rule 113(c) and (d) of the ICE Clear Europe Rules (with references to "the Clearing House" in those Rules being read, for the purposes of these ARC Hearing Procedures, as "the Exchange").
- 1.4 Any action or decision permitted or required to be taken by the ARC Committee (but not an ARC Disciplinary Panel) under these ARC Hearing Procedures may be taken by the chair of the ARC Committee in his or her sole discretion.

### 2 Settlement discussions

- 2.1 As per Rule E.4.3A, the Exchange and the Member(s) and/or the Person(s) Subject to the Regulations in receipt of a Notice (the "**Respondent**", with each of the Exchange and the Respondent being a "**Party**" and, together, the "**Parties**") may attempt to settle the disciplinary proceedings at any stage.
- 2.2 An ARC Disciplinary Panel may have regard to any attempts made to reach a settlement by a Party or the Parties when determining any question as to sanctions and/or costs.
- 2.3 The Parties may agree to stay the disciplinary proceedings at any time for the purposes of settlement discussions. Any such agreement as to a stay for the purpose of settlement discussions must be for a defined period of time and must have a defined end date. The agreement as to a stay and the agreed end date must be recorded in written correspondence between the Parties.
- 2.4 Where an agreed stay impacts the deadline for service of a Defence, the Parties will agree a new deadline and record this in written correspondence.

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<sup>1</sup> References to Rules in [Section E](#) of the Rules in these ARC Hearing Procedures are to be taken as reference to the version of Section E applying from 21 October 2020. These ARC Hearing Procedures are issued without prejudice to the discretion given to an ARC Disciplinary Panel under Rule E.4.8.



- 2.5 Where an agreed stay impacts any deadline set forth, agreed or prescribed under these ARC Hearing Procedures, time for compliance with such deadlines will pause on the day that a stay is agreed and resume on the first Business Day after the stay comes to an end.<sup>2</sup> The Exchange shall inform the ARC Committee (or ARC Disciplinary Panel if appointed) of the dates of the agreed stay.
- 2.6 If during any settlement discussions the Exchange determines (in its sole discretion) that further settlement discussions will not give rise to a realistic prospect of settlement, the Exchange will inform the Respondent and the ARC Committee (or ARC Disciplinary Panel if appointed) in writing that the settlement discussions and stay of the disciplinary proceedings have concluded.
- 2.7 Where settlement discussions do lead to a proposed settlement, Rule E.4.3A will apply.

### **3 Steps following receipt of the Defence**

- 3.1 Following receipt of a Defence from the Respondent the Exchange will seek to agree directions for the conduct of the proceedings with the Respondent, including:
- 3.1.1 if not served with the Defence, the deadline for service by the Respondent on the Exchange of any evidence in support of its Defence;
  - 3.1.2 the deadline for service by the Exchange on the Respondent of any response by the Exchange to the Defence (with or without evidence in support);
  - 3.1.3 if not served with the Notice, the deadline for service on the Respondent by the Exchange of notice of its proposed sanction;
  - 3.1.4 the documents to be provided to the ARC Committee, which must include: the Notice, the evidence to be relied upon by the Exchange, the document setting out the Exchange's proposed sanction, the Defence, any evidence to be relied on by the Respondent, and any response by the Exchange to the Defence. The documents referred to in this paragraph will be referred to collectively as the "**Disciplinary Proceedings Bundle**";
  - 3.1.5 unless the Respondent has indicated a preference for proceedings to be determined without a hearing (i.e. determined "on paper"), dates (in the form of windows of time) in which an ARC Hearing could take place and the preferred format (which may be in person, by telephone or conducted virtually, using other communications technology); and
  - 3.1.6 any other directions agreed between the Exchange and the Respondent.

#### **("Agreed Directions")**

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<sup>2</sup> By way of illustration: if a Party has seven days left to comply with a direction on the day a stay is agreed, that Party will have seven days left to comply with the same direction, starting with the first Business Day after the stay comes to an end.



- 3.2 The Respondent and the Exchange will have 21 days from the date of effective service of the Defence to agree directions under paragraph 3.1 above.<sup>3</sup>
- 3.3 If directions are agreed, the Exchange will provide the Disciplinary Proceedings Bundle and a copy of the Agreed Directions to the ARC Committee and Respondent once the contents of the Disciplinary Proceedings Bundle have been finalised in accordance with the Agreed Directions.
- 3.4 If directions are not agreed by the deadline set out in paragraph 3.2, the Exchange will, within seven days of the expiry of that deadline, provide the ARC Committee with: the Notice, Defence and notice of proposed sanction, the Exchange's proposed directions and any proposed directions provided by the Respondent.

#### **4 Appointment of an ARC Disciplinary Panel by the ARC Committee**

- 4.1 On receipt of the Disciplinary Proceedings Bundle, or of the documents set out in paragraph 3.4, the ARC Committee will consider the matters in Rule E.4.2.2 and issue its decision under Rule E.4.2.2 to the Parties.
- 4.2 If the ARC Committee decides to proceed with the disciplinary proceedings, the ARC Committee may appoint an ARC Disciplinary Panel (being either a Full-ARC Panel or Sub-ARC Panel) to determine the proceedings in accordance with Rule E.4.2.2. The Exchange and Respondent will be informed of the composition of the ARC Disciplinary Panel within seven days of its composition.

#### **5 ARC Disciplinary Panel: conduct of the proceedings**

- 5.1 The ARC Disciplinary Panel will consider the matters in Rule E.4.3 (amendment of the Notice) and issue any decision under that Rule to the Parties. Should the Respondent wish to serve a revised Defence following a decision made under Rule E.4.3 to amend the Notice, it should notify the ARC Disciplinary Panel in writing within seven days of the decision being issued.
- 5.2 The ARC Disciplinary Panel will either adopt the Agreed Directions (with or without changes) or, in the absence of Agreed Directions, issue any directions as to the matters in paragraph 3.1 and any other directions as it sees fit ("**Disciplinary Panel Directions**"). Should any Party wish to apply to vary any Disciplinary Panel Directions, it should do so in writing to the ARC Disciplinary Panel within seven days of the Disciplinary Panel Directions being issued.
- 5.3 The ARC Disciplinary Panel may require the Exchange and Respondent to attend a pre-hearing review (which may be in person, by telephone or conducted virtually, using other communications technology) for such purposes.

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<sup>3</sup> If the 21st day after the date of effective service of the Defence is not a Business Day the deadline referred to in paragraph 3.2 will be the end of the next Business Day after the 21st day.



5.4 If the Respondent has indicated that it wishes to have the matter determined without an ARC Hearing, the ARC Disciplinary Panel may proceed to determine the proceedings on paper.

## **6 Conduct of an ARC Hearing**

6.1 The ARC Disciplinary Panel will have the powers given to an ARC Disciplinary Panel under Rule E.4.8 of the Rules and may adopt such procedure for the ARC Hearing as it considers fair in all the circumstances. An ARC Hearing will proceed in the manner deemed most appropriate and fair by the Chair of the ARC Disciplinary Panel (the "**Disciplinary Chair**").

6.2 The ARC Hearing may proceed as follows:

6.2.1 Introductions of those present, which may include:

- (a) The Disciplinary Chair;
- (b) Other ARC Disciplinary Panel members present;
- (c) The Secretariat;
- (d) Those representing the Exchange (including any external advisors);
- (e) Those representing the Respondent (including any external advisors).

6.2.2 The Disciplinary Chair will outline the order of proceedings, which may (subject to the discretion of the Disciplinary Chair) be as follows:

- (a) The Exchange will be invited to present its case (being limited to matters addressed in the documents comprising the Disciplinary Proceedings Bundle).
- (b) The Respondent will be invited to respond to the case (being limited to matters addressed in the documents comprising the Disciplinary Proceedings Bundle).
- (c) The Exchange will be invited to respond to the Respondent's submissions.
- (d) The ARC Disciplinary Panel may ask questions of either Party.
- (e) The Exchange will be invited to make any concluding remarks, followed by concluding remarks from the Respondent.
- (f) There will be an adjournment for the ARC Disciplinary Panel to deliberate.



- (g) The ARC Hearing will then re-convene, either for the decision to be given, or for the ARC Disciplinary Panel to indicate a further adjournment for deliberation.

6.2.3 The Disciplinary Chair may call an adjournment at any convenient point.

## **7 Determination of the proceedings**

- 7.1 The ARC Disciplinary Panel will determine the matter by applying the civil standard of proof, i.e. on the balance of probabilities.
- 7.2 The ARC Disciplinary Panel will give written reasons for its decision.
- 7.3 The ARC Disciplinary Panel may order any Party to pay costs as it considers appropriate.
- 7.4 The outcome of the ARC Hearing will be notified in writing to the Parties, ICE Clear Europe (where applicable) and any other party involved.

## **8 Appeals**

- 8.1 As regards appeals: provision is made in Rule E.6.